

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-10489-NMG

GLENN S. BATES,

Plaintiff

v.

TOWN OF HARWICH AND HARWICH
POLICE DEPARTMENT,
CHRISTOPHER KENDER, AND BARRY
MITCHELL,

Defendants

DEFENDANTS KENDER AND
MITCHELL'S MOTION IN LIMINE TO
HAVE COURT DEEM ESTABLISHED THE
FACT OF PLAINTIFF'S CONVICTIONS

Now come defendants Christopher Kender and Barry Mitchell ("defendants"), and hereby request that this Court deem established the fact that plaintiff was convicted of two counts of assault with a dangerous weapon, to wit: a hockey stick, as a result of the incident underlying this case, in order that the Court include said fact in its description of the case to the jury. As grounds therefor, defendants state as follows:

1. This action arises from an incident during which Kender shot plaintiff as he assaulted Kender and Mitchell, Harwich police officers, with a hockey stick.
2. As a result of the encounter, plaintiff was convicted in Barnstable Superior Court on two counts of assault and battery with a dangerous weapon, to wit: a hockey stick, on Kender and Mitchell. See Certified Verdict Slips (Exhibit A).
3. On or about July 5, 2005, defendants propounded a Request for Admissions to plaintiff, in which they requested that plaintiff admit to the above-described convictions, and, further, admit to the authenticity of the related verdict slips. See Request for Admissions (Exhibit B).

4. Plaintiff failed to respond to the Request for Admissions within 30 days; as such, the fact of his convictions, and the authenticity of the verdict slips, are deemed admitted. See Fed.R.Civ.P. 36(a). (Plaintiff has not responded to the Request to date).
5. However, plaintiff would not stipulate to the fact of his convictions, or admissibility of the verdict slips, in the parties' Joint Pre-Trial Memorandum.
6. Based on the conclusive nature of the certified verdict slips, as well as plaintiff's failure to respond to the Request for Admissions, the fact of his convictions is established. Therefore, defendants request that this Court include in its description of the case to the jury the fact that plaintiff was convicted on two counts of assault and battery with a dangerous weapon, to wit: a hockey stick, as a result of the incident underlying the Complaint.

DEFENDANTS CHRISTOPHER KENDER
AND BARRY MITCHELL

By their attorneys,

/s/ Jackie Cowin.
Joseph L. Tehan, Jr. (BBO# 494020)
Jackie Cowin (BBO# 655880)
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110
(617) 556-0007

338368/METG/0629

CERTIFICATE OF SERVICE

I, Jackie Cowin, certify that the above document will be served upon any party or counsel of record who is not a registered participant of the Court's ECF system, upon notification by the Court of those individuals who will not be served electronically. /s/Jackie Cowin

Commonwealth of Massachusetts

BARNSTABLE, ss.

SUPERIOR COURT
No. 2002-0019-01

COMMONWEALTH

vs.

GLEN S BATES

OFFENSE: ASSAULT AND BATTERY WITH A DANGEROUS WEAPON
(M.G.L. C.265, §15A(b))

COUNT I *Barry Mitchell*

- () NOT GUILTY
- () NOT GUILTY-- BECAUSE OF LACK OF CRIMINAL RESPONSIBILITY
- (X) GUILTY --OFFENSE AS CHARGED

COUNT II *C. Bender*

- () NOT GUILTY
- () NOT GUILTY-- BECAUSE OF LACK OF CRIMINAL RESPONSIBILITY
- (X) GUILTY --OFFENSE AS CHARGED

DATED: May 2, 2003

Kathleen Johnson
FOREPERSON OF THE JURY

A true copy, Attest:

[Signature]
Clerk

EXHIBIT A

Commonwealth of Massachusetts

BARNSTABLE, ss.

SUPERIOR COURT
No. 2002-0019-02

COMMONWEALTH

vs.

GLEN S BATES

OFFENSE: ASSAULT WITH INTENT TO MURDER
(M.G.L. C.265, §15)

COUNT I

- (X) NOT GUILTY
- () NOT GUILTY- BECAUSE OF LACK OF CRIMINAL RESPONSIBILITY
- () GUILTY --OFFENSE AS CHARGED
- () GUILTY-LESSOR INCLUDED-ASSAULT WITH INTENT TO KILL

COUNT II

- (X) NOT GUILTY
- () NOT GUILTY- BECAUSE OF LACK OF CRIMINAL RESPONSIBILITY
- () GUILTY --OFFENSE AS CHARGED
- () GUILTY-LESSOR INCLUDED-ASSAULT WITH INTENT TO KILL

DATED: May 2, 2003

Kathleen Johnson.
FOREPERSON OF THE JURY

A true copy, Attest:

[Signature]
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-10489-MEL

GLENN S. BATES,

Plaintiff

v.

TOWN OF HARWICH AND HARWICH
POLICE DEPARTMENT, CHRISTOPHER
KENDER, AND BARRY MITCHELL,

Defendants

DEFENDANTS CHRISTOPHER
KENDER AND BARRY
MITCHELL'S FIRST REQUEST
FOR ADMISSIONS TO PLAINTIFF
GLENN S. BATES

REQUEST NO. 1

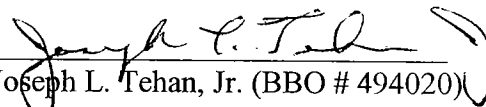
As a result of your actions taken toward defendants Kender and Mitchell on or about November 30, 2001, you were convicted on or about May 2, 2003 in Barnstable Superior Court (No. 02-0019-01) of two (2) counts of assault and battery with a dangerous weapon pursuant to G.L. c. 265, § 15A(b).

REQUEST NO. 2:

The attached verdict slip (Ex. "A") is a true and accurate copy of the verdict slip reflecting your conviction in Barnstable Superior Court (No. 02-0019-01) on two (2) counts of assault and battery with a dangerous weapon pursuant to G.L. c. 265, § 15A(b).

DEFENDANTS CHRISTOPHER KENDER
AND BARRY MITCHELL,

By their attorneys,


Joseph L. Tehan, Jr. (BBO # 494020)
Jackie Cowin (BBO # 655880)
Kopelman and Paige, P.C.
31 St. James Avenue
Boston, MA 02116
(617) 556-0007

Commonwealth of Massachusetts

BARNSTABLE, ss.

SUPERIOR COURT
No. 2002-0019-01

COMMONWEALTH

vs.
GLEN S BATES

OFFENSE: ASSAULT AND BATTERY WITH A DANGEROUS WEAPON
(M.G.L. C.265, §15A(b))

COUNT I *Barry Mitchell*
() NOT GUILTY
() NOT GUILTY- BECAUSE OF LACK OF CRIMINAL RESPONSIBILITY
(X) GUILTY --OFFENSE AS CHARGED

COUNT II *C Bender*
() NOT GUILTY
() NOT GUILTY- BECAUSE OF LACK OF CRIMINAL RESPONSIBILITY
(X) GUILTY --OFFENSE AS CHARGED

DATED: May 2, 2003

Kathleen Johnson
FOREPERSON OF THE JURY